Filed 12/19/16 In re T.F. CA1/4

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| In re T.F. et al., Persons Coming Under the Juvenile Court Law. | |
| ALAMEDA COUNTY SOCIAL SERVICES AGENCY,<br>Plaintiff and Appellant,<br>v.<br>C.H. et al.,<br>Defendants and Respondents. | A147725<br><br>(Alameda County Super. Ct. No. OJ14023670, OJ14023671) |

The Alameda County Social Services Agency (the Agency) appeals an order finding reasonable family reunification services had not been provided to C.H. (Mother) and ordering an additional six months of services. The Agency contends that the evidence does not support the finding that reasonable services were not provided and that the court improperly extended services beyond 18 months from the time Mother's children were removed from her care. We shall affirm the order.

## I. BACKGROUND

The Agency filed a petition in October 2014 pursuant to Welfare and Institutions Code[1] section 300 on behalf of T.F., then 16 years old, and S.H., then 11 years old (collectively, Minors), alleging Mother was unable to care for Minors adequately because

[1] All subsequent statutory references are to the Welfare and Institutions Code.

of her history of psychiatric problems, including 14 psychiatric hospitalizations in the previous 12 months. According to the petition, Mother had choked S.H. and threatened to stab her, on numerous occasions she had packed T.F.'s clothing in garbage bags and placed them on the front porch, she had kicked T.F. out of the home several weeks previously, she had called T.F. vile names, there had been a report that she had tried to set her husband's hair on fire, and she had not been taking her medications. Mother had taken S.H. out of school in second grade and had failed to educate her properly. The ability of Minors' respective fathers to care for them was unknown. Minors were placed in the home of a family friend. According to the detention report, Mother was placed on a section 5250 hold at a psychiatric facility in September 2014 after she choked S.H., held a knife to her throat, and threatened to kill her.

The jurisdictional/dispositional hearing was continued several times. In a January 2015 addendum report, the Agency informed the court that Mother had visited Minors once in November 2014, and S.H. had visited with Mother at Christmas. Mother had not indicated whether she wanted further visits. Mother told the social worker she thought the Agency was going to get her a therapist. The social worker asked for the name of Mother's psychiatrist, but Mother did not provide it. A February 2015 addendum report indicated the social worker had given Mother the name of a therapist, referred her to a counseling center, and offered her a bus pass to visit Minors.

On April 7, 2015, the Agency reported that during a March 2015 supervised visit, Mother gave each girl an envelope with a letter to read in which she told them she would not call them anymore. The letter to T.F. said that T.F. had "brought it on yourself" and that she was "in a place which is ran by the devil and his children."

On May 5, 2015, the juvenile court sustained the allegations that Mother had failed to protect Minors and that there was no provision for their support. The court ordered reunification services for Mother. No services were offered to either girl's alleged father.

The Agency filed a Request to Change Court Order on October 8, 2015, asking the court to terminate reunification services for Mother on the ground she had not

participated in any visitation during the reporting period and had made minimal progress on her case plan. In a status review report for the six-month review hearing, the Agency reported that Mother had been living at Villa Fairmont, a mental health treatment facility. She had been discharged from the facility in August 2015. Her husband thereafter had had her hospitalized at a different psychiatric facility, where she stayed for about a month. She reentered Villa Fairmont on October 2, 2015.

The report noted that Mother was participating in counseling and psychotropic medication management through Villa Fairmont, but that she had not followed up on the psychological evaluation to which she had been referred and had not participated in parent education services. In July 2015, the social worker had provided a case plan, tips on reunification, referrals to parenting classes, "parent advocate" and "parent orientation" information, and information about her next court date. The social worker again met with Mother at Villa Fairmont on August 4, 2015, and asked about possible placement options for Minors. Mother indicated she would be discharged in the near future. During August, the social worker sent Mother a housing list and provided information about arranging visits with Minors at another facility, including contact information, a bus pass, and twenty dollars in transit fare. He also provided referrals for individual therapy and a psychological evaluation.

Between August 4 and October 2, 2015, the Agency and service providers had been unable to reach Mother. In September 2015, the social worker tried to reach Mother by telephone and left several voice mail messages. Near the end of September, he spoke with Mother's husband, who told him Mother was hospitalized. The social worker met with Mother in early October 2015, after she reentered Villa Fairmont, and gave her an updated case plan and a document with court hearing information, attorney contact information, therapeutic visitation contact information, a telephone number to contact Minors, and referral information.

The report noted that Mother had not participated in any in-person visitation during the reporting period. Mother had not attended an orientation meeting regarding therapeutic visits and had not responded to calls and attempts to arrange visitation. She

had not had a psychological evaluation and had not participated in outside individual therapy or a parenting course. The Agency recommended that reunification services be terminated and that Minors have a permanent living arrangement with their current caregiver.

The review hearing was continued, and in January 2016 the Agency submitted an addendum report. Mother was still receiving treatment at Villa Fairmont. She had visited with Minors once, in January 2016, when a social worker transported her to the visit. This was their first face-to-face visit since March 2015. The report explained that Mother was not comfortable taking public transportation and had not been able to receive family passes to leave the facility regularly because of concerns about her mental health. She had been unable to participate in planned visits in October and November 2015 because she was not stable enough to leave the facility. The social worker had been in contact with Villa Fairmont staff about visitation, and in January 2016 Mother's clinician had informed the social worker that Mother's condition had stabilized and a visit with Minors had been arranged. Mother had continued to have weekly telephone calls with Minors and she had generally behaved appropriately during the calls.

Mother had participated in a psychological evaluation. She was diagnosed with schizoaffective disorder and was taking medication. She had made progress with her mental health treatment, but was not yet able to care for her children.

At the contested hearing on January 26 through 28, 2016, Mother testified that, with the exception of a break beginning in August 2015, she had been at the Villa Fairmont since March 2015. She expected to be released on February 1, 2016. She had called the number the social worker assigned to the case had given her to arrange counseling. She spoke with a counselor, who told her she did not take Medi-Cal. The counselor said she would find out if one of her colleagues took Medi-Cal and promised to call back, but she did not do so. Mother did not get in touch with the social worker to ask for a referral to another counselor.

Mother attended classes and counseling at Villa Fairmont and saw a psychiatrist once a week. She had no recollection of the incident in which she choked S.H. and

threatened her with a knife, and her counseling had not addressed that incident. The counseling she received at Villa Fairmont dealt with psychiatric issues, not parenting or family issues. Mother recognized that she had a mental illness, and she was taking medications.

Mother had not tried to arrange visits with Minors or had much contact with her social worker because she had been working on her rehabilitation; she said the hospital required her to focus on her own treatment. She had not been able to take parenting classes to which she had been referred because they took place at times she was not allowed to leave Villa Fairmont. When she first went to Villa Fairmont, she was not allowed to leave the facility. For a time, she could only get a pass to leave the grounds for two to four hours, which was not enough time to attend a parenting class. She had only recently been allowed to leave the facility for up to six hours. Since receiving the longer passes, she had not tried to arrange a parenting class because she was intensely involved in her therapy. She testified that she would like to attend a parenting class and family therapy.

Mother testified that she had not tried to arrange visits with Minors because she was focusing on her rehabilitation. She had visited with Minors a week before the hearing, and had had weekly monitored telephone calls with them.

The family reunification social worker assigned to the case testified that he was unable to contact Mother between her discharge from Villa Fairmont on August 18, 2015, and October 5, 2015. During that time, he was trying to set up visits between Mother and Minors and to provide her with case plan information. Mother's cell phone was active, and the social worker left several messages on her telephone and sent letters to the address he had for her. He also contacted Minors and their caregiver, and Minors gave him the number of Mother's husband. He spoke to Mother's husband, who said Mother was at a psychiatric hospital and would be returning to Villa Fairmont. From October 2015, after Mother returned to Villa Fairmont, until January 11, 2016, Mother was not allowed passes to leave Villa Fairmont for visitation. The social worker tried to arrange visitation by contacting T.F.'s therapist and staff at Villa Fairmont and the East Bay

Recovery Project. He arranged for Mother to meet with T.F.'s therapist, but Mother was not allowed out of Villa Fairmont for the meeting. He decided not to arrange for Minors to visit Mother at Villa Fairmont because he did not think it was an appropriate location: it was a locked facility and there was no visitation room. Although there was a courtyard with benches, he believed that was the residents' smoking area. He did not know if the facility allowed visitation. It was also his understanding that neither of the girls wanted to go to Villa Fairmont.

The social worker gave Mother a referral for a psychological evaluation in August 2015, but Mother did not arrange an evaluation. He made a second referral in December, and Mother completed the evaluation

The juvenile court found that reasonable services had not been offered or provided to Mother and ordered additional reunification services for Mother. No services were ordered for the father of either minor. The Agency has appealed from this order.

## II. DISCUSSION

### A. Mootness

We must first consider a motion filed by S.H.'s alleged father, D.B., in which Mother joins, contending the appeal should be dismissed as moot.[2] We grant D.B.'s request for judicial notice of an order of the court after a July 19, 2016 hearing, finding the Agency had offered reasonable services to Mother in connection with S.H. and continuing reunification services to the permanency hearing, which was to occur no later than 24 months after S.H. was physically removed.[3] The motion includes a declaration of D.B.'s attorney indicating that the Agency supported the extension of services ordered at the July 19, 2016 review hearing. Because the challenged services have already been

[2] The Agency contends D.B. lacks standing to raise this issue or participate in the appeal both because he is only an alleged father, not a presumed father, and because his rights are not affected by the order at issue. (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715-716.) Because Mother has joined in Father's motion to dismiss the appeal as moot, we decline the Agency's request that we strike the motion. We also deny the Agency's request that we strike D.B.'s respondent's brief.

[3] T.F. had reached the age of 18 before the July 19, 2016 hearing.

provided and the Agency raises no objection to the provision of further services, D.B. and Mother argue the appeal is moot.

"As a general rule, it is the court's duty to decide ' " ' actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " ' [Citation.] An appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief. [Citation.] Still, a court may exercise its inherent discretion to resolve an issue when there remain 'material questions for the court's determination' [citation], where a 'pending case poses an issue of broad public interest that is likely to recur' [citation], or where 'there is a likelihood of recurrence of the controversy between the same parties or others.' [Citation.]" (*In re N.S.* (2016) 245 Cal.App.4th 53, 58-59.) Moreover, an issue is not moot if the purported error may affect the outcome of subsequent proceedings. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)

The Agency contends the appeal is not moot because the finding that it did not provide reasonable services could result in the loss of federal funding for Minors' support. (See Seiser & Kumli, Cal. Juvenile Court Practice & Procedure (2016) Periodic Review Procedures, § 2.152[4][e], p. 2-540 ["For the agency, a lack of reasonable efforts finding can result in the loss of Title IV-E funding that the federal government provides the state [citation]."].) In the circumstances, we will exercise our discretion to consider the reasonableness of the services the Agency provided, and we shall therefore deny the motion to dismiss the appeal as moot.

However, we can offer no effective relief as to the remaining issues raised by the Agency—whether the trial court should have terminated reunification services and whether it made the necessary findings to extend services beyond 18 months from the time Minors were moved—since those services have already been provided and the Agency supports their further extension. We shall therefore not consider those issues.

**B. Reasonableness of Services**

"Typically, when a child is removed from a parent, the child and parent are entitled to 12 months of child welfare services to facilitate family reunification. . . . If, at the 12-month hearing, [the Agency] does not prove, by clear and convincing evidence, that it has provided reasonable services to the parent, family reunification services must be extended to the end of the 18-month period. (§§ 361.5, subd. (a), 366.21, subd. (g)(1), [citation.]" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) We review the juvenile court's finding for sufficiency of the evidence. (*Id*. at p. 1346.) " ' "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." ' [Citation.]" (*Ibid*.) Where, as here, the trial court concluded that the party with the burden of proof did not carry the burden, "the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

In making this determination, we bear in mind that "[i]n almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) However, the agency must make " '[a] good faith effort' to provide reasonable services responding to the unique needs of each family. [Citation.]" (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) In providing those services, the agency "must identify the problems leading to the loss of custody, offer services designed to remedy these problems, and maintain reasonable contact with the parents to assist in areas where compliance proves difficult, such as transportation. [Citation.]" (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.)

In the case of a parent with mental illness, "the reunification plan, including the social services to be provided, must accommodate the family's unique hardship. The objective of the plan must be to provide services to facilitate 'the resumption of a normal family relationship . . .' [citation], and 'must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.' [Citation.]" (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1790.) " '[T]he effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success.' [Citation.]" (*Ibid.*) Where a parent is hospitalized for treatment of mental illness, visitation "may or may not be reasonable depending on the rules and regulations of the institutions involved, the condition of the parent, and the distance from the children's placement. The record should clearly reflect, however, the basis upon which a special needs parent is denied the opportunity to maintain visitation and an ongoing relationship with his or her child." (*Id.* at p. 1792.)

Applying these standards, we conclude the record is sufficient to support the juvenile court's finding that Mother was not offered reasonable services. In reaching its decision, the court emphasized that, while there was no lack of effort on the part of the social worker, the Agency had offered services with which Mother was unable to comply. The court stated, "If someone is given things to do, and factually they cannot do them, then I have decided or determined that . . . reasonable services were not provided." Mother testified that she was either hospitalized or at Villa Fairmont for the better part of the previous nine months. While at Villa Fairmont, she was required to focus on her own mental health, which lay at the heart of the dependency. Villa Fairmont is a locked facility and there is evidence that during most of the time Mother was in Villa Fairmont, she either was unable to leave the facility or could leave for only short periods, and that the parenting classes to which she was referred did not take place at times she could attend them. While the social worker was familiar with Villa Fairmont, he did not know whether the facility allowed visitation and he does not appear to have ascertained whether visits could take place in the courtyard area. On this record, the juvenile court could properly find that the Agency did not meet its burden to show, by clear and convincing

evidence, that it had offered reasonable services to Mother that were designed to meet her particular needs.

## III. DISPOSITION

The motion to dismiss the appeal as moot is denied. The order appealed from is affirmed.

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Rivera, J.

We concur:

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Reardon, Acting P.J.

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Streeter, J.